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~~Security Information~~

28 May 1953

OGC Has Reviewed

MEMORANDUM FOR: Deputy Director/Plans

SUBJECT: Proposed Agency Security Regulation

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1. In accordance with your instructions I met with Mr. John [REDACTED] of the Legal Counsel's office at 9 a.m., 28 May 1953, to review the proposed Agency instruction. In view of the size of the paper I did not personally read it, but relied on the oral interpretation furnished by [REDACTED] for the following comments.

2. As you are aware, the DCI's statutory authority allows for separation at his discretion for CIA employees on the basis of security as well as loyalty. Specific Agency regulations provide for the establishment of senior boards to make recommendations to the DCI, whose findings in each instance are final.

3. A statute was passed in 1950 providing similar authority to the Departments of State and Defense and other sensitive agencies. There was also provided a Government "loyalty board" which served as a focal point of review and, in effect, a court of ultimate jurisdiction for all other cases. This constituted itself as a loyalty, as opposed to security, tribunal.

4. The 1950 statute provided that the Civil Service Commission maintain a central registry of all persons considered under this statute. CIA, upon its own request, was excepted from this provision.

5. A recent Presidential directive, #10450 (as opposed to a statute), was issued which, in essence, extends provisions similar to those contained in the CIA and State and Defense statutes to all Government agencies. In addition, this directive was addressed to CIA and State and Defense, resulting in a situation whereby these agencies have two possible procedures whereby security or loyalty cases can be considered. This is of course assuming the validity of the necessary legal, as opposed to political, interpretation of a Presidential order as opposed to a statute. The Presidential letter addressed to CIA stated that procedures would be evolved by the Attorney General and be furnished to all agencies or departments of the Government.

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6. The procedures provide that each agency or department will nominate representatives to the Civil Service Commission who will comprise a central Government panel. Under the recent order an agency may clear an employee, but in the event separation is desired by the agency, the case must be referred to a board selected from the Civil Service Commission panel. No member of the reviewing board may be an employee of the separating agency.

7. In the discussion of this provision I am told that the CIA Security Officer objected to outside agency representatives reviewing CIA cases. The DDCI ruled that compliance with the order was necessary, but instructed that the Agency procedure provide for internal handling of sensitive CIA cases. This would appear to be feasible and practical by using the DCI's present authority under the CIA act. In other words, each case may be considered for handling under the provisions of the CIA act or under Executive Order #10450. In addition, I am told that the order provides that if any CIA employee appears before an outside board on a security case, each panel member will have been cleared by the Security Officer, CIA, prior to referral of the case.

8. To recapitulate, CIA will have a discretionary or permissive right to select which of the two procedures will be followed in any case.

9. While I was not instructed to review this problem for the purpose of commenting on the validity of the criteria established by this order, I believe some note should be made of this vital point as it might affect DD/P career employees. It appears that rather sweeping categories of violations can be construed as constituting jurisdiction for dismissal. It is realized that no order of this nature can be so phrased that interpretation is not necessary. I did note one provision which appears to affect the perspective with which cases should be viewed. The order is said to provide for termination in cases where continued employment is not "clearly consistent with national security." Obviously this is a desirable thing, but it leaves in doubt where the burden of procedure, if not the burden of proof, lies in any hearings under this order. It would appear that any unresolved allegation from an unidentified source would almost necessarily result in termination under a strict application of this phraseology. To further belabor a perhaps obtuse point, I believe that a more fortunate choice of language would be "whose continued employment is inconsistent with national security." In order for DD/P to carry out his assigned responsibilities, it is necessary for us to employ on a career basis certain people whose background makes them susceptible to false charges and allegations which, while they may be denied, cannot be proven to be false. Thus it would not be possible to make an affirmative showing, which may be required under the letter of the order.

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10. Recommendations: The order itself is not classified and I have concurred with its issuance on behalf of the DD/P. The following recommendations are inherent in our present policy, but I believe they should be recognized as part of Agency regulations.

a. No case involving a DD/P employee should be referred to an outside tribunal without written agreement by the DD/P.

b. Because of the fact that defamation, poison pen letters and other media of character assassination are accepted techniques of secret intelligence services, no employee who has been engaged in sensitive operations shall be tried before any tribunal within or without CIA without being informed of the nature of the charges and the general identity of the informing persons. In the event that the employee is not cleared, he should be released from his security obligation to the specific extent necessary to present relevant data which will serve to clarify any derogatory reports.

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Chief,
Foreign Intelligence

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